
(1990) 07 MAD CK 0039
In the Madras High Court

Kannammal and Another

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 16-07-1990

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 55, 5A, 6

Citation : (1991) 90 MLJ 1

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Judgement

Kanakaraj, J.—By a notification issued u/s 4(1) of the Land Acquisition Act, 1894, hereinafter referred to as "the Act", an extent of about

539.98 acres in Nolambur Village, Saidapet Taluk, Chengalpattu District were sought to be acquired for the development of Ambattur

Neighbourhood Scheme. The notification was issued in G.O.Rt. No. 307, Housing Department, dated 11.12.1975 and published in the Gazette

dated 31.12.1975. The deceased grandmother of the petitioner in W.P. No. 9783 of 1982 and the petitioner in W.P. No. 9784 of 1982 owned

certain extents of land notified for acquisition. The declaration u/s 6 of the Act was approved in G.O.Ms. No. 1784, Housing and Urban

Development Department, dated 30.12.1978 and published in the Gazette dated 30.12.1978. It is at this stage, the above writ petitions have been

filed seeking to quash the notification u/s 4(1) of the Act and the declaration u/s 6 of the Act. The learned Counsel appearing for the petitioner

raises the following points: (1) The substance of the notification u/s 4(1) of the Act was published in the village only on 22.2.1976 and this being

separated from the Gazette Notification dated 31.12.1975, by a long gap of time, the entire acquisition proceedings are vitiated. (2) The

procedure prescribed for the conduct of the Enquiry u/s 5-A of the Act as per Rule 3(b) and (c) of the rules framed u/s 55 of the Act, has not

been strictly followed. (3) The Government has not taken note of several Government Orders exempting certain types of lands from Acquisition

Proceedings.

2. The respondents have filed a detailed counter affidavit. So far as the first contention is concerned, it is stated in para.11 of the counter affidavit

that the substance of the notification was published in the Village on 22.1.1976 and not on 22.2.1976 as contended by the petitioner. Taking the

correct date viz., 22.1.1976, it is contended that there is no long gap of time between the Gazette Notification and the publication in the village. I

am inclined to agree with the contention put forward by the learned Government Advocate on this aspect. It is now well settled that the Gazette

Notification and the publication in the village can be separated by a gap of time and whether the gap of time will vitiate the acquisition proceedings

will depend upon the facts of each case. In this case, the gap of time is not too long and the enquiry u/s 5-A having been conducted only on

8.4.1976, there was also no prejudice to the land owners. Accordingly, I am dismissing the first contention.

3. So far as the second contention is concerned, the argument is that the objections submitted by the petitioners at the enquiry u/s 5-A on 8.4.1976

had been forwarded to the Tamil Nadu Housing Board which is the requisitioning authority. It is not disputed that the remarks of the requisitioning

authority were communicated to the petitioner only on 16.10.1978. In para 22 of the counter-affidavit, these dates are admitted. In my view, this

admitted position regarding the remarks of the Tamil Nadu Housing Board being communicated to the petitioners on 16.10.1978, nearly after two

years after the enquiry u/s 5-A vitiates the entire enquiry u/s 5-A of the Act. The relevant portion of Rule 3(b) and (c) is extracted below to show

that the contention of the petitioner is well founded.

3.(b). If any objections are received from a person interested in the land and within the time prescribed in Sub-sections (1) of Section 5-A,

Collector shall fix a date of hearing the objections and give notice thereof to the objector as well as to the department or company requiring the

land, where such department is not the Revenue Department. Copies of the

objections shall also be forwarded to such department or company.

The department or company may file on or before the date fixed by the Collector a statement by way of answer to the objections and may also

depute a representative to attend the enquiry.

(c) On the date fixed for enquiry or any other date to which the enquiry may be adjourned by the Collector, the Collector shall hear the objector or

his pleader and the representative, if any, of the department or company and record any evidence that may be produced in support of the

objections.

Strictly speaking, the remarks of the requisitioning authority shall be available to the petitioner at the time of the enquiry u/s 5-A. In fact in many

cases, the Land Acquisition Officers hold a second enquiry after the remarks are obtained by issuing notices to the land owners as well as to the

requisitioning body. Such a procedure will alone conform to the requirements of Rule 3(b) and (c) quoted above. In this view of the matter, I have

necessarily to hold that the enquiry u/s 5-A of the Act is vitiated in this case.

4. So far as the last contention is concerned, it is explained in para.10 of the counter-affidavit which is as follows:

The petitioner has referred to the orders issued by Government in G.O.Ms. No. 837, Housing Department, dated 15.6.76 and G.O.Ms. No. 413,

Housing, dated 3.3.79 prescribing certain norms regarding exclusion of lands from acquisition proceedings relating to certain schemes for the Tamil

Nadu Housing Board. The petitioner has also stated that these orders which pertain to certain schemes have been extended to other schemes also

concerning the Housing Board in G.O.Ms. No. 57, Housing, dated 12.1.80 and that according to these norms, her lands should have been

excluded from the acquisition proceedings. These Government Orders relate to exclusion of lands which are covered by layouts approved by the

Director of Town Planning built up areas village site and areas covered by factories. Out of the lands held by the petitioner and notified for

acquisition proceedings, the lands comprised in Survey Nos. 311/1 and 311/2 in which the brick-kiln and the chimney are situated and the lands in

Survey Nos. 307, 312 and 313 which are used for brick Industry were already excluded from acquisition proceedings before the publication of

draft declaration. The lands now covered by acquisition proceedings do not come

under any of the categories mentioned in the above Government Orders and they are cultivable lands.

The said statements in the counter-affidavit sufficiently answer the last contention.

5. Having regard to my finding on the second contention, I hold that the enquiry u/s 5-A of the Act in so far as the petitioners are concerned is

vitiated. The result will be that the proceedings subsequent to Section 5-A enquiry and all proceedings subsequent thereof will stand quashed so far

as the petitioners are concerned. It will be open to the respondents to give fresh notice to the petitioners for an enquiry u/s 5-A of the Act by

following the procedure prescribed in Rule 3(b) and (c) quoted above. I make it clear that the notification u/s 4(1) will stand. The writ petition is

allowed. The Rule nisi is made absolute to the extent indicated above. There will be no order as to costs.